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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

JUN 23 2017

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THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

Freddie Herndon

Plaintiff(s),

vs.

* Casaccio Brothers, Inc
DBA Learnington Foods
* MATANKY Realty
* BR Lauderdale Plaza, LLC

Defendant(s).

17cv4732

Judge Edmond E. Chang

Magistrate Judge Young B. Kim

COMPLAINT FOR VIOLATION OF CONSTITUTIONAL RIGHTS

This form complaint is designed to help you, as a pro se plaintiff, state your case in a clear manner. Please read the directions and the numbered paragraphs carefully. Some paragraphs may not apply to you. You may cross out paragraphs that do not apply to you. All references to "plaintiff" and "defendant" are stated in the singular but will apply to more than one plaintiff or defendant if that is the nature of the case.

1. This is a claim for violation of plaintiff's civil rights as protected by the Constitution and laws of the United States under 42 U.S.C. §§ 1983, 1985, and 1986.
2. The court has jurisdiction under 28 U.S.C. §§ 1343 and 1367.
3. Plaintiff's full name is Freddie Herndon 6-23-17.

If there are additional plaintiffs, fill in the above information as to the first-named plaintiff and complete the information for each additional plaintiff on an extra sheet.

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

4. Defendant, _____, is
(name, badge number if known)

☐ an officer or official employed by _____;
(department or agency of government)

_____ or

☐ an individual not employed by a governmental entity.

If there are additional defendants, fill in the above information as to the first-named defendant and complete the information for each additional defendant on an extra sheet.

5. The municipality, township or county under whose authority defendant officer or official acted is _____. As to plaintiff's federal constitutional claims, the municipality, township or county is a defendant only if custom or policy allegations are made at paragraph 7 below.

6. On or about _____, at approximately _____ ☐ a.m. ☐ p.m.
(month, day, year)
plaintiff was present in the municipality (or unincorporated area) of _____
_____, in the County of _____,
State of Illinois, at _____,
(identify location as precisely as possible)

when defendant violated plaintiff's civil rights as follows (*Place X in each box that applies*):

- ☐ arrested or seized plaintiff without probable cause to believe that plaintiff had committed, was committing or was about to commit a crime;
- ☐ searched plaintiff or his property without a warrant and without reasonable cause;
- ☐ used excessive force upon plaintiff;
- ☐ failed to intervene to protect plaintiff from violation of plaintiff's civil rights by one or more other defendants;
- ☐ failed to provide plaintiff with needed medical care;
- ☐ conspired together to violate one or more of plaintiff's civil rights;

☒ Other: Congress includes grocery stores as a public accommodation covered by the ACT 42 U.S.C. section 12181. The owner of the business, property manager, and owner of the property are failing to make this property accessible; egregiously violate one of the most important parts of the American Disabilities ACT is Title III, 2 Known as the Public Accommodations Services Operated by Private Entities. 42 U.S.C. Section 12181

[If you need additional space for ANY section, please attach an additional sheet and reference that section.]

4. Defendant, _____, is
(name, badge number if known)

☐ an officer or official employed by _____;
(department or agency of government)

_____ or

☐ an individual not employed by a governmental entity.

If there are additional defendants, fill in the above information as to the first-named defendant and complete the information for each additional defendant on an extra sheet.

5. The municipality, township or county under whose authority defendant officer or official acted is _____. As to plaintiff's federal constitutional claims, the municipality, township or county is a defendant only if custom or policy allegations are made at paragraph 7 below.

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State of Illinois, at _____,

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7. Defendant officer or official acted pursuant to a custom or policy of defendant municipality, county or township, which custom or policy is the following: ***(Leave blank if no custom or policy is alleged):*** _____

8. Plaintiff was charged with one or more crimes, specifically:

9. ***(Place an X in the box that applies. If none applies, you may describe the criminal proceedings under "Other")*** The criminal proceedings

- ☐ are still pending.
- ☐ were terminated in favor of plaintiff in a manner indicating plaintiff was innocent.¹
- ☐ Plaintiff was found guilty of one or more charges because defendant deprived me of a fair trial as follows _____
- ☐ Other: _____

¹Examples of termination in favor of the plaintiff in a manner indicating plaintiff was innocent may include a judgment of not guilty, reversal of a conviction on direct appeal, expungement of the conviction, a voluntary dismissal (SOL) by the prosecutor, or a *nolle prosequi* order.

10. Plaintiff further alleges as follows: *(Describe what happened that you believe supports your claims. To the extent possible, be specific as to your own actions and the actions of each defendant.)*

*Please see attachment [#]10

11. Defendant acted knowingly, intentionally, willfully and maliciously.

12. As a result of defendant's conduct, plaintiff was injured as follows:

Plaintiff has not been able to enjoy the benefits, privileges and conditions that extends to customers without disabilities. Plaintiff has suffered emotionally, economically and embarrassment due to unlawful deprivation of his federally protected rights.

13. Plaintiff asks that the case be tried by a jury. ☒ Yes ☐ No

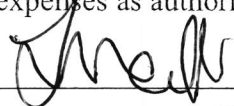
14. Plaintiff also claims violation of rights that may be protected by the laws of Illinois, such as false arrest, assault, battery, false imprisonment, malicious prosecution, conspiracy, and/or any other claim that may be supported by the allegations of this complaint.

WHEREFORE, plaintiff asks for the following relief:

A. Damages to compensate for all bodily harm, emotional harm, pain and suffering, loss of income, loss of enjoyment of life, property damage and any other injuries inflicted by defendant;

B. ☐ (Place X in box if you are seeking punitive damages.) Punitive damages against the individual defendant; and

C. Such injunctive, declaratory, or other relief as may be appropriate, including attorney's fees and reasonable expenses as authorized by 42 U.S.C. § 1988.

Plaintiff's signature: 

Plaintiff's name (print clearly or type):

Freddie Herndon

Plaintiff's mailing address:

4522 W. Jackson Blvd

City

Chicago

State

IL

ZIP

60624

Plaintiff's telephone number: (312) 597-9511

Plaintiff's email address (if you prefer to be contacted by email):

Freddie herndon283@gmail.com

15. Plaintiff has previously filed a case in this district. ☐ Yes ☒ No

If yes, please list the cases below.

Any additional plaintiffs must sign the complaint and provide the same information as the first plaintiff. An additional signature page may be added.

* 10 - Attachment 10

(1)

Defendants are involved with offering public accommodations at a property in Chicago, Illinois, located at 3240 West Roosevelt Road, known as Leamington Foods. For approximately one year and as late as June 8, Defendants denied Mr. Herndon the access, use, enjoyment of the benefits, extended to all other grocery customers. When Plaintiff was able to gain entry a week later, he had to wait outside for 20-25 minutes to gain entry from a manager or security guard and another 20-25 minutes to exit after completing his purchase. The majority of the times, the Plaintiff has to pay others \$5-\$7 to shop for him when he does not have the energy to deal with the complexities associated with gaining access to Leamington Foods.

Parties

Plaintiff Freddie Herndon is a 51-year-old disabled African – American man who resides on the west side of Chicago, approximately a mile from Leamington Foods. The plaintiff was a victim of a drive by shooting over 30 years ago that has left him wheel chair bound as a result, he battles many health issues daily.

Defendant Casaccio Brothers, Inc. an Illinois Corporation own Leamington Foods. They own and operate approximately three full service grocery stores in the Chicago land area.

Defendant Matanky Realty has been in the real estate business since 1955. Their real estate services include but are not limited to brokerage, leasing, retail consulting, management, and development.

Defendant Br Lawndale Plaza, LLC purchased 3240 West Roosevelt Road for \$12,666,666.00, it was last recorded in 2013. This information was obtained from Beenverified.com.

FACTS

On July 26, 1990, Congress enacted the Americans with Disabilities Act, 42 U.S.C. section 12101, et seq., establishing the most important civil rights law for persons with disabilities in our country's history.

10 - Attachment

(2)

Congress gave commercial businesses one and half years to implement the Act. The effective date was January 26, 1992.

Mr. Herndon lives on the west side of Chicago at 4522 West Jackson Blvd and does his major grocery shopping at Leamington Foods located at 3240 West Roosevelt Road. He use to shop at the Leamington Foods located at 5467 West Madison Street but was robbed on two occasions so he no longer shops at that location.

Mr. Herndon recalls having as many as ten or more conversations with the Leamington Foods staff and/or security regarding the in accessibility of the store.

Approximately one and a half year ago, Leamington Foods installed concrete pillars that make it impossible for one utilizing a wheel chair/and or a walker to enter the grocery store.

Currently there is not a ramp in front of Leamington Foods, on the few occasions, Mr. Herndon was able to enter Leamington Foods, and he had to use the ramp of the neighboring store, Foot Action. EXHIBIT A

Jimmy, the head of security, shared with Mr. Herndon the pillars were installed in an effort to prevent grocery cart theft.

Mr. Herndon was taken aback by the lack of awareness of his difficulties in accessing Leamington Foods. Having to wait 20-25 minutes to enter and leave is completely unacceptable. Mr. Herndon has cried on numerous occasions regarding his experience at Leamington Foods. EXHIBIT B

Mr. Herndon only form of income is Supplemental Security Income "SSI". Leamington Foods has put tremendous pressure on Mr. Herndon's financial situation. Being forced to pay \$5-\$7 to personal shoppers, is unfair and completely unaffordable to Mr. Herndon.

Defendants treated Plaintiff and other disabled customers differently in a place of public accommodation because of Mr. Herndon's disability. Defendants denied Mr. Herndon the use and enjoyment of the benefits, privileges and conditions that it extends to all other customers.

10 Attachment

3

As a result of the Defendant's unlawful actions as described above, Plaintiff Freddie Herndon has suffered emotionally and economically. The humiliation, embarrassment, emotional distress and unlawful deprivation of his federally protected rights have prompted this lawsuit.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully pray that the Court grant the following relief:

Defendants remove all barriers in front of Leamington Foods immediately. (~~Exhibit C~~)

Defendants install curb ramps in front of Leamington Foods per state and federal law.

Defendants provide a thorough and exterior evaluation by a certified accessibility expert that will identify other barriers that impede access to Leamington Foods by people with physical disabilities.

Defendants provide sensitivity training for all employees on the American Disability Act.

Defendants agree to pay all legal and professional fees associated with this complaint

The barriers identified above are only those that the plaintiff personally encountered. Plaintiff is presently unaware of other barriers that may in fact exist at property and relate to Mr. Herndon's disability. Plaintiff will seek to amend this complaint once such additional barriers are identified, as it is plaintiff's intention to have all barriers that exist that relate to Mr. Herndon's disabilities removed to afford him full and equal access.

Exhibit
(A)





Exhibit
(B)